FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6000 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	: Coram, : : : :	Court's or Judge's Orders .

Mr. D. R. Singh for petitioner
Mr. S. J. Bhor for R

CORAM: SMT. RANJANA DESAI, J.

30/9/05

P.C.:-

The petitioner is original plaintiff. In this writ petition he has challenged order dated 2/9/05 whereby the trial court had dismissed chamber summons taken out by him praying for permission to amend the plaint.

2. The case of the petitioner is that the area where the suit premises are situated is declared slum by the competent authority. The plaintiff did not know about the said fact at the time of filing of the suit. Hence he could not aver it in his plaint.

According to the plaintiff he came to know about it for the first time during the course of recording of evidence. The plaintiff's further case is that he is entitled for the benefit of the policy of the Government. The plaintiff wants to incorporate these facts in the plaint.

3. The trial court has rejected the chamber summons on the ground that recording of evidence is complete and the suit is kept for arguments. According to the petitioner, the notification is of the year 1998. Therefore, the claim of the plaintiff that he came to know about the notification recently cannot be accepted. The trial court has further observed that the proposed amendment is not necessary to adjudicate the claim of the plaintiff.

4. I have heard the learned counsel for the petitioner. He has produced before me the copy of the Government Notification. The learned Judge is right when he says that the

amendment is sought to be introduced belatedly. It is true that suit is kept for arguments and the plaintiff ought to have brought this fact on record earlier.

5. However, in my opinion, if really the said area is covered by the Government Notification then the plaintiff ought not to be prevented from taking up this plea. There can be no dispute about the fact that the plaintiff ought to have made the amendment application at the earliest. Such belated steps hamper smooth disposal of the suit. However, purely in the interest of justice I feel that this amendment deserves to be granted but that can be done only after saddling the petitioner with heavy costs. Hence the following order:

6. Order dated 2/9/05 is set aside. The chamber summons No. 976 of 2005 is granted only on the condition that the petitioner pays costs quantified at Rs.10,000/- to the respondent Corporation. Payment of

cost will be condition precedent to the grant of chamber summons. Payment to be made within four weeks from today.

b) If the costs are not paid the City Civil Court will not allow the amendment to be carried out. Needless to say that the defendant will be entitled to file additional written statement.

c) Writ petition is disposed of in the aforestated terms.

.....